IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1004 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MANSUR FAKRUDDIN VORA

Appearance:

1. Criminal Appeal No. 1004 of 1992

Mr.B.D.Desai, learned A.P.P. for Petitioner No. 1

MR KB ANANDJIWALA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. The respondents above named was tried before the learned Judicial Magistrate, First Class Surendranagar in

Criminal case no. 2145 of 1990 for offences punishable under Sections 7(1)(5) and Sec. 16 of Prevention of Food Adulteration Act (hereinafter referred to as the Act). At the end of trial, the learned J.M.F.C.Kalol was pleased to acquit the respondents-accused. Dissatisfied with the said judgment and order of acquittal, the State has preferred this appeal.

2. The brief facts of the present case are as under:

The complainant is Food Inspector and on 25.04.1990 at about 10.00 a.m. he went with two panchas to the shop of present respondents and took sample of turmeric powder. He then divided the powder into three equal parts and sealed in bottles and took signature of he present respondents. Thereafter, after analysis report Q.2/426/1990 dated 28.05.1990, it was found that the turmeric powder was adulterated, thereby, the respondents violated the provisions of Prevention of Food Adulteration Act. Therefore the complaint was filed in the court. After recording the statements, charge was framed against the respondents. The respondents-accused claimed not guilty and claimed to be tried.

3. The learned trial court, on recording depositions of various witnesses, going through the documentary evidence produced on record and after hearing the learned advocates for the parties, held that the prosecution has failed to prove the charge against the accused and acquitted the accused. It is against this judgment and order this appeal is filed by the complainant-State.

4. According to the learned A.P.P.Mr.B.D.Desai for the State, the judgment and order of acquittal of the respondents was contrary to law and evidence on record. The learned trial court has not considered the prosecution evidence in its proper perspective nor he has given cogent and convincing reasons for acquitting the respondents. The learned trial court has erred in believing that the bottles in which the powder was packed were clean and neat as per requirement of the Act and Rules and it was sealed properly in presence of panchas. The learned trial court has also erred in holding that the public analyst's report does not show that the sample was injurious to the human being and it is not mentioned the report as to which method was applied for the analysis and came to the conclusion that turmeric powder was adulterated. The learned trial court has also erred in coming to the conclusion that the helper of the appellant-Food Inspector has not entered into the witness box to say that he cleaned the bottles. Learned

Magistrate ought to have presumed that all the procedure was done in official manner and therefore there was no error committed by any of the officers in bringing expert analysis on record. Lastly it was submitted by learned A.P.P. for the State that in view of the decisions of Apex Court as well as this court, this court must come to the conclusion that respondents were selling adulterated turmeric powder and hold that prosecution has proved case beyond reasonable doubt and that said acquittal order should be set aside and sentence should be awarded to the respondents.

Against the aforesaid submissions, Mr.Anandjiwala learned advocate for the respondents has submitted, relying on the report of analysis dated 28.05.1990, that sr.no. 1 to 6 are in the negative but sr.no. 7 shows as under : "Microscopic exam shows that the same is of turmeric powder mixed with rice starch". Microscopic examination is not permissible under the Rules and Act. How the public analyst came to the conclusion that turmeric powder is mixed with rice starch is not brought on record. In the last lines of the certificate produced at exh. 21 public analyst says that the sample turmeric powder does not conform to the standards and provisions laid down under Prevention of Food Adulteration Rules, 1955. Mere stating the aforesaid facts would not help the prosecution in absence of not examining the public analyst. Relying on the letter addressed by the public analyst Bhuj-Kutch to the present Food Inspector Surendranagar, runs the submissions of learned counsel for the respondents argued that the ground no. 2 is mentioned as under :

"Slip of Local Health Authority :
1. Not present.
2. Not bearing serial no./code no.
3. Not pasted with adhesive.
4. Not secured by thread and four seals.
5. Not signature of vendor of witness.
6. Slip does not go round completely form top to bottom in sample no."

On perusal of the original analysis report exh. 21, it appears that aforesaid columns have been striked of except column no. 1. Learned advocate for the respondents have argued the matter relying on the copy submitted to the Court wherein there is no striking out of aforesaid columns. Therefore, the arguments rendered by Mr.Anandjiwala learned advocate for the respondents has no base whatsoever.

According to learned counsel for the respondents,

the appellant-Food Inspector has used the tumbler/spoon to take sample of turmeric powder. There is nothing on record to show that before the sample turmeric powder was taken for analysis, the said tumbler/spoon was cleaned either by respondent no.2 or Food Inspector. It may be possible that in a small shop the vendor might have used the same spoon for starch and turmeric powder and may be some small portion of rice starch would have remained in the spoon. Therefore also, the procedure prescribed by Rules is not properly followed.

In the submissions of Mr.Anandjiwala learned advocate for the respondents, sanction of prosecution is required under Sec. 20 of the Act. It is not given properly and there appears non-application of mind in granting such permission. For this purpose, he read over office order at exh. 26 and submitted that there is a reference of violation of Rules 44(s). He has also drawn my attention to the charge framed by the trial court dated 1.2.92 exh. 30 and submitted that the court has also stated that there is violation of Rule 44(4) of the said Act. In his submissions, there is no Rule 44(s) or Rule 44(4) of the Rules. I have also perused the said Rule 44. I do not find any such Rule s or 4 and therefore also there is a reason to say that the prosecuting agency has not applied its mind before granting such sanction for which benefit should go to the present respondents.

Relying on sub-rule (3) of Rule 4 of Rules, the learned counsel for the respondents submitted that it is mandatory for the Food Inspector to send by Regd.Post to the Director a copy of memorandum and a specimen impression of the seal, used to seal the container and the cover. From the papers, it appears that present appellant had sent the copy of memorandum and specimen impression of the seal and containers without regd. post. Therefore, there is a violation of mandatory provision. While drawing attention of this court, Appendix `B' under Rule 5 of Prevention of Food Adulteration Rules 1955, reads as under :

"A.05.20.01 is relevant, Turmeric (haldi) powder means the powder obtained by grinding the dried rhizomes or bulbous roots of the plant of Curcima longa L. It shall be free from artificial colouring matter. The powder shall conform to the following standards :
Moisture... Not more than 13.0 per cent by weight
Total ash....Not more than 9.0 per cent by weight.
Ash insoluble in dilute HCL...Not more than 1.5 per cent by weight

Test for lead chromate....Negative
Total Starch per cent by weight... Not more than 60.0 percent."

He submitted that in column 5 Total starch maximum 60% is shown. However, the report given by public analyst exh. 21 does not disclose how much starch per cent by weight is shown. Therefore also, benefit should go to the present respondents. Relying on the authority of this court in case of State of Gujarat V/s Gobar@Gopal Tapubhai Dholariya reported in 1996(1) G.L.R. 137, the learned advocate for the respondents submitted that Rule 14 is mandatory. Non-observance thereof will be fatal to the prosecution case. In the facts before the learned Single Judge of this court, the prosecution has failed to show that material requirements of Rule 14 of the Rules are satisfied, the impugned acquittal order cannot be disturbed. The order further says that where two reasonable conclusions are drawn on the evidence on record, the High Court should, as a matter of judicial caution refrain from interfering with the order of acquittal recorded by the Court below. Relying on the Chimanlal Govindji Thakker V/s State of Gujarat & Anr. reported in XXXVIII(1) G.L.R. 458, the learned A.P.P. submitted that microscopic test is not provided for in the Act or Rules. The learned advocate for the respondents has also relied on the decision in case of Kishorkumar Venilal Patel V/s Dayaswarup Bhailalbhai Rao & Anr. reported in XXXII(1) G.L.R.380.

In view of the aforesaid authorities, in submissions of Mr.Anandjiwala learned advocate for the respondents, when the trial court has passed order of acquittal the High Court should, as a matter of judicial caution refrain from interfering with the order of acquittal recorded by the court below. Lastly he prayed for dismissal of the appeal.

I have perused the authorities cited by learned advocate for the respondents and gone through the paper book along with the original papers of the trial court. Section 2(i) states that "adulterant" means any material which is or could be employed for the purpose of adulteration. (i)(a) "adulterated" an article of food shall be deemed to be adulterated (h) if the article contains any poisonous or other ingredient which renders it injurious to health; (l) if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of faviability but which renders it injurious to health; (m) if the quality or purity of the

article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health;
Provided that, where the quality or purity of the article, being a primary food has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.
Explanation-Where two or more articles of primary food are mixed together and the resultant article of food-
(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and
(b) is not injurious to health;
then such resultant article shall not be deemed to be adulterated within the meaning of this clause; "
If we peruse the aforesaid definition in light of analyst report produced at exh. 21, whether the turmeric powder mixed with rice starch is injurious to heath or not is not mentioned anywhere in the said report. The possibility is also not ruled out that by the same spoon or tumbler the Inspector or his helper might have taken the starch and turmeric powder. In this case the public analyst nor helper is examined. It is true that if the Public Analyst is required to be examined as witness, then the respondents should have given application to the concerned court for calling him as witness, however, for deposing the basic formality done by the helper, he should have entered into the witness box to deny the contention regarding non-cleaning bottles in which samples were taken, for which benefit should go to the present respondents.

So far as contention of Mr.Anandjiwala learned advocate for the respondents, memorandum with other specifications should be sent by Regd.Post whereas it was sent with two sealed packets. For this purpose, if we peruse the letter addressed by the Food Inspector-present appellant it is clear that two samples bearing sr.no.1/90 and 2/90 were sent by parcel on 3.5.90 in wooden box containing two sealed packets. Each packet containing one sealed container and one memorandum. Column no. 3 of the said letter says that memorandum with specimen seal impression received through R post on 2.5.90. Therefore, I am not supporting the arguments advanced by Mr.Anandjiwala learned advocate for the respondents on this point. More so, the Food Inspector has produced the R.Post slip on the record.

In case of State of Gujarat V/s Gobar @Gopal Tapubhai Dholariya (supra), this court has held in para 6 as under :

"Rule 14 is mandatory. Non-observance thereof will be fatal to the prosecution case. This aspect, as such is not disputed in this appeal, with the result, since the prosecution has failed to show that material requirements of Rule 14 of the Rules are satisfied, the impugned acquittal order cannot be disturbed. It would not be necessary to address to the other infirmities considered by the appellate Court, since the appeal is liable to be dismissed against the impugned order of acquittal on this sole ground."

In light of the aforesaid observation, I am of the opinion that this court should not also interfere with the order of acquittal of the present respondents.

In case of Jagdish Chandra V/s State of Uttar Pradesh reported in AIR 1981 S.C.1233 the court has observed that there were prescribed standards for cinnamon powder (dalchini). In the light of the aforesaid judgment, we should peruse the standards as stated in A.05.20.01 Appendix `B' which pertains to definition of standard of turmeric powder in Rule 5 of the Rules, 1955. In light of exh. 21 analyst report, it was as per the standards. However, the Apex Court has deprecated the practice of microscopy test for analyzing sample of Dalchini in the present circumstances of the case before hand. In the case before me also, there is a microscopic test done by the public analyst and no mention of chemical test. Therefore also, this court should not interfere with the judgment and order of the learned trial court.

In view of the aforesaid circumstances, I am of the opinion that no interference of this court is required by way of allowing the appeal filed by the State. Therefore, it requires to be dismissed. Hence it is dismissed.

(SHARAD D DAVE, J)

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